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THOMAS KATO

<p>UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK</p> <p>-oOo-</p> <p>KITCHEN WINNERS NY INC.,) Plaintiff,) v.) Case No. : ROCK FINTEK LLC,) 1:22-cv-05276-PAE Defendant._____) ROCK FINTEK LLC,) Counterclaimant and) Third-Party Plaintiff,) v.) KITCHEN WINNERS NY INC.,) Counter-Defendant,) and) ADORAMA INC., HERSHEY WEINER,) JOSEPH MENDLOWITZ, JNS) CAPITAL HOLDINGS LLC and) JOEL STERN,) Third-Party Defendants._____)</p> <p>DEPOSITION OF NON-RETAINED EXPERT WITNESS ON BEHALF OF ROCK FINTEK LLC THOMAS KATO FEBRUARY 1, 2024</p> <p>STENOGRAPHICALLY REPORTED REMOTELY BY: MONIQUE K. GENTRY, RPR, CSR No. 12354</p> <p>Job No. 1994</p>	<p>Page 3</p> <p>A P P E A R A N C E S: (All appearances remotely via videoconference):</p> <p>ATTORNEY FOR ROCK FINTEK LLC: PHILLIP RAKHUNOV, ESQ. Pollack Solomon Duffy LLP 43 West 43rd Street, Suite 174 New York, New York 10036 (617)960-3118 prakhunov@psdfirm.com</p> <p>ATTORNEY FOR KITCHEN WINNERS NY, ADORAMA, INC., AND JOSEPH MENDLOWITZ: ALEXANDER J. SPERBER, ESQ. Lipsius-Benhaim Law, LLP 80-02 Kew Gardens Road, Suite 1030 Kew Gardens, New York 11415 (212)981-8449 asperber@lipsiuslaw.com</p> <p>ATTORNEY FOR JNS CAPITAL HOLDINGS LLC AND JOEL STERN: AVRAM E. FRISCH, ESQ. Avram E. Frisch LLC 1372 Milford Terrace Teaneck, New Jersey 07666 (201)289-5352 frischa@avifrischlaw.com</p> <p>Also Present: Jamie Jordan, Notary Hershey Weiner Brad Gilling</p>
<p>Page 2</p> <p>UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK</p> <p>-oOo-</p> <p>KITCHEN WINNERS NY INC.,) Plaintiff,) v.) Case No. : ROCK FINTEK LLC,) 1:22-cv-05276-PAE Defendant._____) ROCK FINTEK LLC,) Counterclaimant and) Third-Party Plaintiff,) v.) KITCHEN WINNERS NY INC.,) Counter-Defendant,) and) ADORAMA INC., HERSHEY WEINER,) JOSEPH MENDLOWITZ, JNS) CAPITAL HOLDINGS LLC and) JOEL STERN,) Third-Party Defendants._____)</p> <p>Zoom videoconference deposition of THOMAS KATO, Non-Retained Expert Witness on behalf of Rock Fintek LLC, commencing at 1:28 p.m., Eastern, Thursday, February 1, 2024, before Monique Kathleen Gentry, Registered Professional Reporter, California Certified Shorthand Reporter No. 12354 and Notary.</p>	<p>Page 4</p> <p>I N D E X</p> <p>WITNESS: THOMAS KATO</p> <p>EXAMINATION PAGE</p> <p>BY ATTORNEY SPERBER 5</p> <p>BY ATTORNEY FRISCH 52</p> <p>E X H I B I T S</p> <p>NUMBER DESCRIPTION PAGE</p> <p>Kato Expert 1 Rock Fintek Expert Disclosure 9</p> <p>Kato Expert 2 Michael Elstro deposition transcript taken November 13, 2023 21</p>

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<p style="text-align: right;">Page 9</p> <p>1 Australia?</p> <p>2 A I don't -- I don't believe we did, and I don't think</p> <p>3 anybody asked me about it during my deposition, about the lost</p> <p>4 business or other relationships.</p> <p>5 ATTORNEY SPERBER: Okay. I'm going to show you a</p> <p>6 document. We will mark this -- let me see. Off the record</p> <p>7 for just a minute until I figure out how to share a document</p> <p>8 with you.</p> <p>9 BY ATTORNEY SPERBER:</p> <p>10 Q Mr. Kato, can you see a document in front of you</p> <p>11 titled Rock Fintek LLC's Expert Witness Disclosure?</p> <p>12 A Yes, I do.</p> <p>13 ATTORNEY SPERBER: Okay. And just for the record, I've</p> <p>14 marked this exhibit as Exhibit Kato Expert 1.</p> <p>15 (Exhibit Kato Expert 1 was marked for</p> <p>16 identification.)</p> <p>17 BY ATTORNEY SPERBER:</p> <p>18 Q Are you familiar with this document?</p> <p>19 A Hold on. I've got to zoom it a little bit more.</p> <p>20 Yes.</p> <p>21 Q Does this document reflect -- at least in the</p> <p>22 section titled Non-retained Expert, does that reflect the</p> <p>23 testimony or the scope of testimony that you will be</p> <p>24 presenting as an expert in this matter?</p> <p>25 A Yes.</p>	<p style="text-align: right;">Page 11</p> <p>1 were contracting to do with them going forward.</p> <p>2 Q When you say the amount of revenue you had done, can</p> <p>3 you be more specific?</p> <p>4 A Yeah. I think it's down here in -- further down.</p> <p>5 We did \$32 million in sales previously with them, and then</p> <p>6 another \$37 million, so \$70 million. And on top of that, we</p> <p>7 were making a COVID test to give them, and we were talking</p> <p>8 about other products along with bidding on a glove contract</p> <p>9 that would be three years.</p> <p>10 Q So I think you're referring to a line here where it</p> <p>11 says that, "Mr. Kato expects to further base his opinion on</p> <p>12 the fact that between March 2020 and February 2021, Rock</p> <p>13 Fintek sold to Ascension Health various personal protection</p> <p>14 equipment including gloves, gowns and masks in the amount of</p> <p>15 approximately \$32 million as unrelated to any of the Medicare</p> <p>16 glove transactions at issue in this lawsuit."</p> <p>17 Is that what you are referring to?</p> <p>18 A Correct.</p> <p>19 Q Okay. Now, just to begin with, the \$32 million that</p> <p>20 you refer to there, is that revenue or profits?</p> <p>21 A Revenue.</p> <p>22 Q So I assume Rock Fintek had expenses as well,</p> <p>23 correct?</p> <p>24 A Minimal expenses.</p> <p>25 Q Okay. So you're saying that you had \$32 million in</p>
<p style="text-align: right;">Page 10</p> <p>1 ATTORNEY RAKHUNOV: And, Counsel, I apologize for</p> <p>2 interrupting, but just since you raised it, I do just want to</p> <p>3 put on the record that there have been documents produced in</p> <p>4 this case concerning the Australian affiliate of Ascension</p> <p>5 Health, and I would just refer to Bates No. RF003489. It's</p> <p>6 one example that I could pull up quickly just so there's no</p> <p>7 confusion.</p> <p>8 ATTORNEY SPERBER: Okay.</p> <p>9 BY ATTORNEY SPERBER:</p> <p>10 Q If you look at the paragraph that begins, "Mr. Kato</p> <p>11 is expected to testify," do you see where I'm referring to?</p> <p>12 A Yes, I do.</p> <p>13 Q So the second sentence there, "Mr. Kato expects to</p> <p>14 testify that Rock Fintek would have earned but has lost at</p> <p>15 least approximately \$36 million per year in profits for at</p> <p>16 least three years that it had been earning from its</p> <p>17 relationship with Ascension and had reasonably expected to</p> <p>18 continue earning for the foreseeable future."</p> <p>19 Is that a correct statement of your expert opinion in</p> <p>20 this matter?</p> <p>21 A Yes.</p> <p>22 Q Can you explain to me how you reached the number of</p> <p>23 \$36 million in profits per year for three years?</p> <p>24 A Based on what I had previously done with them, the</p> <p>25 amount of revenue we did and the amount of business that we</p>	<p style="text-align: right;">Page 12</p> <p>1 profits as well?</p> <p>2 A No. No.</p> <p>3 Q So what -- over that time period, what were Rock</p> <p>4 Fintek's profits?</p> <p>5 A I looked at the financials. I don't recall exactly</p> <p>6 what those profits were.</p> <p>7 Q Okay.</p> <p>8 A I would have to look at them again.</p> <p>9 Q Now, that \$32 million, does that include</p> <p>10 approximately \$9.25 million given by Ascension Health as a</p> <p>11 down payment in connection with the purchase order at issue in</p> <p>12 this lawsuit?</p> <p>13 A No. I don't believe so.</p> <p>14 Q It does not. Okay. Well, it says over here that</p> <p>15 between March 2020 and February 2021 -- that's the timeframe</p> <p>16 you're referring to, right?</p> <p>17 A Let me see what you're talking -- March 20th to</p> <p>18 February Mr. Kato --</p> <p>19 ATTORNEY RAKHUNOV: It goes over from page 2 to page 3 of</p> <p>20 the document.</p> <p>21 THE WITNESS: Yeah.</p> <p>22 ATTORNEY RAKHUNOV: It's hard to --</p> <p>23 THE WITNESS: Yeah. I see it.</p> <p>24 BY ATTORNEY SPERBER:</p> <p>25 Q Now, did you reach this \$32 million number by adding</p>

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<p>Page 13</p> <p>1 up all the payments from Ascension Health?</p> <p>2 A I believe when we went -- when I went through the</p> <p>3 numbers and added them up, I added everything up and excluded</p> <p>4 the amount of funds that Ascension Health paid me for their</p> <p>5 gloves. It may or may not have included that part of it.</p> <p>6 Q So is it your testimony that if I were to go back</p> <p>7 through Rock Fintek's bank statements, it did not include the</p> <p>8 \$9.25 million down payment provided by Ascension Health on</p> <p>9 December 8th, I would still reach \$32 million in revenue that</p> <p>10 Rock Fintek received from Ascension Health in that timeframe?</p> <p>11 Is that your testimony?</p> <p>12 A You may or may not. If it's in the bank statements,</p> <p>13 then it happened. If it's not, then it did not.</p> <p>14 Q Well, I want to understand. You --</p> <p>15 A I believe maybe it's included, but I'm not for</p> <p>16 certain, and I don't want to say I'm for certain on it.</p> <p>17 Q Well, you are here testifying as an expert</p> <p>18 concerning Rock Fintek's lost profits, correct?</p> <p>19 A That's four years ago you're talking about.</p> <p>20 Numbers, I looked at, but four years ago of lost profits.</p> <p>21 Q Okay.</p> <p>22 A The total amount -- total revenue is -- you have it</p> <p>23 at \$32 million plus the \$37 million, so --</p> <p>24 Q So you're saying \$37 million is on top of this;</p> <p>25 meaning that the \$9.25 million is not included in the</p>	<p>Page 15</p> <p>1 Health?</p> <p>2 A We sold several other products, Intco -- Medgluv,</p> <p>3 Intco, Lyfemed. There might have been two other ones. I have</p> <p>4 to remember the names of the companies.</p> <p>5 Q So, again, I'm trying to understand your opinion</p> <p>6 that Rock Fintek would have made \$36 million per year in</p> <p>7 profits for at least three years.</p> <p>8 Now, you say that in -- between March 2020 and</p> <p>9 February 2021, Rock Fintek had revenue of \$32 million, and</p> <p>10 you're not sure of the exact amount of the profits that Rock</p> <p>11 Fintek had, so how are you projecting from that revenue to</p> <p>12 profits in subsequent years?</p> <p>13 A How did I project that revenue into profit? Based</p> <p>14 on the relationship and the communication we had with</p> <p>15 Ascension and based on their deposition and their testimony</p> <p>16 saying very likely they would still be working with us as of</p> <p>17 today even, then I believe we would be doing the same amount</p> <p>18 of sales if not more. And the profit from just the testing</p> <p>19 kits alone was -- we were making them around \$1.50, \$1.20, and</p> <p>20 they were going to be retailed around \$5 or \$6. We also were</p> <p>21 selling them other masks, other gowns, other products.</p> <p>22 Q So, let me -- let's go -- okay. Let's focus on that</p> <p>23 aspect of things. So am I correct that Ascension testified</p> <p>24 they were not interested in purchasing additional gloves from</p> <p>25 Rock Fintek even before they realized there were issues with</p>
<p>Page 14</p> <p>1 \$32 million? Is that your testimony?</p> <p>2 A It might be included.</p> <p>3 THE WITNESS: Phillip, is it included or not?</p> <p>4 ATTORNEY RAKHUNOV: Well, I would -- I'm not here to</p> <p>5 testify, but I would just say I'm not sure why folks aren't</p> <p>6 just looking at the document that's on the screen because --</p> <p>7 ATTORNEY SPERBER: Look. I'm here to ask Mr. Kato. He</p> <p>8 is testifying as an expert in Rock Fintek's lost business. I</p> <p>9 want to understand the nature of his opinion here.</p> <p>10 THE WITNESS: Okay. I will just read the document.</p> <p>11 "Mr. Kato expects to further base his opinion on the fact that</p> <p>12 between March '20 and February '21, Rock Fintek sold to</p> <p>13 Ascension various personal protection equipment and clothes,</p> <p>14 gowns, masks, in the amount of \$32 million that is unrelated</p> <p>15 to any Medicare glove transactions at issues in the lawsuit."</p> <p>16 So, yes. It was included.</p> <p>17 BY ATTORNEY SPERBER:</p> <p>18 Q What's included?</p> <p>19 A The \$9 million deposit.</p> <p>20 Q It says that this \$32 dollars includes gloves that</p> <p>21 were not part of the Medicare glove transaction, right? It</p> <p>22 says unrelated to any of the Medicare glove transaction at</p> <p>23 issue in this lawsuit.</p> <p>24 A Correct.</p> <p>25 Q What other gloves did Rock Fintek sell to Ascension</p>	<p>Page 16</p> <p>1 the gloves that had already been provided?</p> <p>2 ATTORNEY RAKHUNOV: Objection. Form. It</p> <p>3 mischaracterizes testimony.</p> <p>4 BY ATTORNEY SPERBER:</p> <p>5 Q You can answer.</p> <p>6 A I'm still on the payment side of your question</p> <p>7 before you rolled -- I didn't answer that question about the</p> <p>8 payments and how I was going to come up with the profit.</p> <p>9 Q Well, okay. Was there a formula you used to reach</p> <p>10 that number of \$36 million per year in profits?</p> <p>11 A Yeah. I came up with the total revenue I brought</p> <p>12 into them was around approximately \$62 million. Payments to</p> <p>13 my suppliers were approximately \$19.4 million. Payments for</p> <p>14 my logistics was approximately \$6 million, and my profit was</p> <p>15 approximately \$36 million.</p> <p>16 Q Let's -- I want to break this up.</p> <p>17 A Okay.</p> <p>18 Q So you previously testified that Rock Fintek lost</p> <p>19 money on the \$37 million purchase order for gloves at issue in</p> <p>20 this lawsuit.</p> <p>21 A Correct.</p> <p>22 Q So any profits that Rock Fintek made were prior to</p> <p>23 that, correct?</p> <p>24 A Correct.</p> <p>25 Q So what -- if Rock Fintek had continued doing</p>

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<p style="text-align: right;">Page 17</p> <p>1 business with Ascension, after the 200 million purchase order</p> <p>2 had been fulfilled --</p> <p>3 A Yeah.</p> <p>4 Q -- what specific products would it have been selling</p> <p>5 to Ascension?</p> <p>6 A We would have been selling -- hopefully, in my</p> <p>7 opinion, testing kits. We would have been selling them more</p> <p>8 gloves. We would have been selling them more masks, gowns.</p> <p>9 They talked about butterfly straps. They talked about other</p> <p>10 products that they also needed, IV bags, the lines for the IV</p> <p>11 bags; you know, the -- just whatever came up that they were</p> <p>12 having a hard time with.</p> <p>13 Q How do you know --</p> <p>14 A They sent us a whole list, "These are all the items</p> <p>15 that we could use." And we are not glove experts, but we are</p> <p>16 experts in procuring items that are difficult to get.</p> <p>17 Q How do you know how many of these items Ascension</p> <p>18 would have purchased from Rock Fintek?</p> <p>19 A I believe Ascension had told us on the glove side,</p> <p>20 it was about a billion gloves a year they were purchasing, and</p> <p>21 they have a three-year contract which was going to come up for</p> <p>22 RFP, and we could bid on it obviously if everything went well.</p> <p>23 And we talked to them about the testing kits, and they told us</p> <p>24 in an e-mail that, "We'll take X amount of these testing kits</p> <p>25 if they are FDA approved and done."</p>	<p style="text-align: right;">Page 19</p> <p>1 It's right there. It says, "Approximately \$32 million from</p> <p>2 Medcare."</p> <p>3 Q We are talking about revenue, correct?</p> <p>4 A What's that?</p> <p>5 Q You said the \$32 million is unrelated to Medcare,</p> <p>6 right?</p> <p>7 A Only \$32 million -- yeah. It's unrelated.</p> <p>8 Q And that's revenue?</p> <p>9 A Correct.</p> <p>10 Q How was Rock Fintek's profit higher than that</p> <p>11 revenue?</p> <p>12 A Probably maybe the referrals that they gave us and</p> <p>13 some of the other business.</p> <p>14 Q So you're not talking specifically about business</p> <p>15 with Ascension?</p> <p>16 A I'm talking about when everything collapsed with</p> <p>17 Ascension, we lost all of our cashflow to continue to do</p> <p>18 business and provide anything to anybody else because we were</p> <p>19 trying to fix the damage for about a year and a half with</p> <p>20 Ascension. Essentially, it put Rock Fintek out of business</p> <p>21 trying just to damage control the relationship with Ascension.</p> <p>22 Q Didn't we establish at the very beginning of this</p> <p>23 deposition that your testimony was concerning the value of</p> <p>24 Rock Fintek's lost business with Ascension?</p> <p>25 A My lost business with Ascension is related to lost</p>
<p style="text-align: right;">Page 18</p> <p>1 So we hired FDA attorneys. We started making the testing</p> <p>2 kits to be able to sell them which were much higher margins</p> <p>3 than we were making on anything else. Any product on their</p> <p>4 list, we could get they would buy. They gave us a whole list.</p> <p>5 Q You're sitting here testifying -- again, you put a</p> <p>6 number on this. You said, "At least \$36 million per year in</p> <p>7 profits."</p> <p>8 So, first, do you acknowledge that would be far more</p> <p>9 profits than, you know, on an annual basis than Rock Fintek</p> <p>10 had made from Ascension in prior years?</p> <p>11 A No.</p> <p>12 Q You don't agree with that?</p> <p>13 A No.</p> <p>14 Q What were the profits that Rock Fintek made from</p> <p>15 Ascension between March 2020 and February 2021?</p> <p>16 A In February 2021?</p> <p>17 Q Yeah.</p> <p>18 A We made approximately -- like I said, we brought in</p> <p>19 approximately \$62 million. Made payments to suppliers at</p> <p>20 \$14.5 million approximately, and paid logistics approximately</p> <p>21 \$6.1 million, and then we went ahead and deducted that and</p> <p>22 came out \$36 million in profit.</p> <p>23 Q Up to February 2021?</p> <p>24 A Correct. I don't know if it's up -- it might be</p> <p>25 after February 2021. I'm not sure of the exact date it ended.</p>	<p style="text-align: right;">Page 20</p> <p>1 business to other people I was doing business with. If</p> <p>2 Ascension had been successful and I had the correct gloves,</p> <p>3 all the other business would have kept going with the other</p> <p>4 clients.</p> <p>5 Q So specifically with Ascension, just Ascension, what</p> <p>6 was the profits that Rock Fintek made between March 2020 and</p> <p>7 the time it entered into --</p> <p>8 A The entire time --</p> <p>9 (Simultaneous colloquy.)</p> <p>10 THE WITNESS: The entire time -- the entire profit was</p> <p>11 \$36 million. I don't know up to February. The entire time</p> <p>12 was \$36 million. That's your answer. You're going to ask it</p> <p>13 10 more times, I'm going to give you the same answer the same</p> <p>14 way. It's \$36 million.</p> <p>15 BY ATTORNEY SPERBER:</p> <p>16 Q You did testify that you lost money on the PO for</p> <p>17 the 200 million gloves, correct?</p> <p>18 A I did what?</p> <p>19 Q You lost money -- Rock Fintek lost money on the</p> <p>20 purchase order for 200 million gloves, correct?</p> <p>21 A Correct.</p> <p>22 Q So clearly there was no profit on that aspect of</p> <p>23 Rock Fintek's business, correct?</p> <p>24 A Correct, loss. We had about 40 percent of our</p> <p>25 margin including about 40 percent of the truck and supply</p>

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<p>Page 21</p> <p>1 costs.</p> <p>2 Q So any profits Rock Fintek made were prior to that,</p> <p>3 correct?</p> <p>4 A Yeah, and legal -- yeah.</p> <p>5 Q And am I correct that Rock Fintek had approximately</p> <p>6 \$20 -- \$24 million in revenue with Ascension prior to that</p> <p>7 purchase order at issue in this --</p> <p>8 A \$24 million --</p> <p>9 ATTORNEY RAKHUNOV: So I don't know if that was just me.</p> <p>10 I just didn't hear the last two words you said, Alex.</p> <p>11 BY ATTORNEY SPERBER:</p> <p>12 Q Am I correct that Rock Fintek had approximately</p> <p>13 \$24 million in revenue with Ascension prior to the purchase</p> <p>14 order at issue in this lawsuit?</p> <p>15 A "\$24 million"? We had \$32 million unrelated.</p> <p>16 ATTORNEY SPERBER: Okay. Let me show you -- I will mark</p> <p>17 this as Kato Expert 2.</p> <p>18 (Exhibit Kato Expert 2 was marked for</p> <p>19 identification.)</p> <p>20 BY ATTORNEY SPERBER:</p> <p>21 Q Do you see in front of you a deposition transcript</p> <p>22 of Michael Elstro, dated November 13, 2023?</p> <p>23 A Yes.</p> <p>24 Q You testified earlier that you reviewed this</p> <p>25 testimony -- this deposition transcript prior to today's</p>	<p>Page 23</p> <p>1 have, but he's not the accounting department at Ascension, so</p> <p>2 this --</p> <p>3 Q So are you telling me that if I were to go through</p> <p>4 Rock Fintek's bank statements and add up the payments it</p> <p>5 received prior to entering into the purchase order in this</p> <p>6 lawsuit, I would find an excess of \$24 million in revenue from</p> <p>7 Ascension?</p> <p>8 A That's what I believe.</p> <p>9 Q I can tell you I've done that, and I did not find an</p> <p>10 excess of \$24 million in revenue from Ascension.</p> <p>11 ATTORNEY RAKHUNOV: Objection.</p> <p>12 BY ATTORNEY SPERBER:</p> <p>13 Q You are testifying today as an expert in Rock</p> <p>14 Fintek's business, correct?</p> <p>15 A Yes, I am.</p> <p>16 Q And you claim to have reviewed Rock Fintek's</p> <p>17 finances and business records in preparing your expert</p> <p>18 opinion?</p> <p>19 A Yes, I did.</p> <p>20 Q So how is it that you don't know how much revenue</p> <p>21 Rock Fintek was bringing in relation to its business with</p> <p>22 Ascension?</p> <p>23 A I reviewed hundreds of pages of documents. So if</p> <p>24 you want to refer to a document, then I can tell you what it</p> <p>25 says. I don't have a photographic memory. I'm not claiming</p>
<p>Page 22</p> <p>1 deposition, correct?</p> <p>2 A Correct.</p> <p>3 Q Turn to page 13 of Mr. Elstro's deposition</p> <p>4 transcript. Page 13, line 10, I will read you the testimony</p> <p>5 I'm looking at here. This is a question by Mr. Frisch.</p> <p>6 "Q Prior to the -- the purchase order for the gloves in</p> <p>7 question here, how much business had you had done with Rock</p> <p>8 Fintek?</p> <p>9 "A During the term of our engagement with Rock Fintek,</p> <p>10 we ordered and received close to \$24 million in other medical</p> <p>11 products, the 3-ply masks, KN-95 and isolation gowns."</p> <p>12 Do you see where I am over there?</p> <p>13 A Yes, I do.</p> <p>14 Q So am I correct in understanding that prior to the</p> <p>15 purchase order for 200 million gloves at issue in this</p> <p>16 lawsuit, Rock Fintek had only actually done \$24 million in</p> <p>17 revenue from Ascension?</p> <p>18 A No.</p> <p>19 Q "No"?</p> <p>20 A No. Mr. Elstro is not an expert in accounting at</p> <p>21 Ascension. He doesn't work in accounting. Sonya does, and</p> <p>22 Sonya knows exactly the amounts that came in and out, not</p> <p>23 Mr. Elstro.</p> <p>24 The accounting department would. So, Mr. Elstro is not</p> <p>25 in accounting. I don't know what numbers he has or doesn't</p>	<p>Page 24</p> <p>1 to have a photographic memory either. So show me the</p> <p>2 document, I can tell you. I reviewed them. Yes. Expert in</p> <p>3 Rock Fintek's business, Rock Fintek had to stop all other work</p> <p>4 with all other clients and not give any attention to anybody</p> <p>5 else to focus on mitigating the damages that was caused by</p> <p>6 Ascension by giving them the wrong products, fake products.</p> <p>7 That's where all -- the whole business collapsed.</p> <p>8 Q Well, when you're projecting \$36 million per year in</p> <p>9 profits for three years from Rock Fintek's business with</p> <p>10 Ascension, which products would those profits have arisen</p> <p>11 from?</p> <p>12 ATTORNEY RAKHUNOV: Objection. Asked and answered.</p> <p>13 You can answer.</p> <p>14 THE WITNESS: Okay. So gloves, masks, gowns, testing</p> <p>15 kits we were working on, and the business we were doing in</p> <p>16 Australia with the hospital, their sister hospital there and</p> <p>17 UA Health.</p> <p>18 BY ATTORNEY SPERBER:</p> <p>19 Q You're aware, correct, that Rock Fintek{sic}</p> <p>20 testified that as of June 2021 it had no need for additional</p> <p>21 gloves from Rock Fintek in the short term?</p> <p>22 ATTORNEY RAKHUNOV: Objection.</p> <p>23 THE WITNESS: They had no need for additional gloves</p> <p>24 because the gloves we gave them were fake, and they wanted to</p> <p>25 return them. That's why.</p>

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<p style="text-align: right;">Page 33</p> <p>1 the test kits. They were happy to see them if they were FDA 2 approved. We found other test kits that were also already FDA 3 approved that we could have just sold and resold at very large 4 margins -- probably 80 percent profit margins because we were 5 going to buy them for similar costs. We had -- we would have 6 had even similar margins. We just wanted to make our own to 7 control it, so that part of the business was going to happen. 8 Q Is it your testimony there is no documentation 9 concerning COVID-19 test kits? 10 A Of course there's documentation. We have lawyers -- 11 (Simultaneous colloquy.) 12 (Reporter clarification.) 13 BY ATTORNEY SPERBER: 14 Q Since it was not produced, it's my understanding 15 that's not part of Rock Fintek's damages. So my question for 16 you then is -- 17 ATTORNEY RAKHUNOV: Objection to the comments. 18 You don't have to respond to counsel's comments. Just 19 wait for a question. 20 BY ATTORNEY SPERBER: 21 Q What percent of the \$36 million per year in 22 projected profits for three years was made up of these 23 COVID-19 test kit sales? 24 A Going forward? 25 Q For the three years that you -- for which you're</p>	<p style="text-align: right;">Page 35</p> <p>1 focus was not the gowns or the masks. It was the gloves. 2 That's our primary focus in the growth. That profit that I'm 3 talking about is coming from gloves. That is not coming from 4 anything else. 5 Q So the \$36 million a year in profits, that's solely 6 based upon a projection of glove sales to Ascension? 7 A I sold them three products. I'm saying the lion's 8 share of the projection is coming from gloves. And then on 9 top of it, which is not in that number, would have been the 10 test kits and not -- what else is not in it is the business 11 that we lost in Australia selling them masks. 12 We sold them KN-95s, 3-ply mask, gowns and gloves. That 13 was it. The test kits was a future product that we were 14 looking to do that's outside of these numbers. 15 Q And, again, can you walk me through the formula for 16 your projected future profits based upon glove sales from 17 Ascension? Let's start at the beginning. How many gloves did 18 Rock Fintek expect to sell to Ascension in the second half of 19 2021? 20 ATTORNEY RAKHUNOV: Objection. 21 THE WITNESS: "Second half of 2021"? I believe minimum 22 200 million, same order. 23 BY ATTORNEY SPERBER: 24 Q What's that based upon? 25 A If we delivered gloves, the masks -- the gloves</p>
<p style="text-align: right;">Page 34</p> <p>1 claiming lost profits? 2 A The COVID test kits, they were in the hundreds or 3 thousands or millions, so -- 4 Q Of kits? 5 A As of the number we gave you now, we were just 6 talking about existing product that we have already sold to 7 them. That would have been on top of that number, the test 8 kits. 9 Q I'm sorry. I did not understand your answer. Could 10 you explain? 11 A The test kits' profitability is not in the numbers 12 that we gave you -- that I gave you. It's on top of it. 13 Q Okay. So in the numbers that you gave me which 14 specific products were -- was Rock Fintek projected to be 15 selling to Ascension over the next three years? 16 A Gowns, masks, gloves. 17 Q Okay. We've already been over the glove issue. Do 18 you know that Rock Fintek -- that Ascension needed additional 19 gowns from -- that was willing to purchase from Ascension(sic) 20 over the next three years? 21 A Say that one more time. 22 Q Do you know or is there any evidence that would 23 support your assertion that Rock Fintek could have sold 24 additional gowns to Ascension in the next three years? 25 A I'm sure they would have bought it, but our primary</p>	<p style="text-align: right;">Page 36</p> <p>1 satisfactory, they were interested in continuing with us. As 2 their supply ran down, they would want more. 3 Q Okay. And how about -- how many gloves was Rock 4 Fintek projecting to sell to Ascension in 2022? 5 A In 2022, we would have had the opportunity to sell 6 1 billion. 7 Q I'm sorry? 8 A One billion gloves. 9 Q One billion with a "B"? 10 A Yeah, with a "B." 200 million, so it's -- we 11 already supplied one-fifth of that. 12 Q Okay. And how many gloves was Rock Fintek 13 projecting to sell to Ascension in 2022? 14 A One billion. 15 Q And same question for 2024? 16 A Yes. 17 Q How many gloves -- 18 A And if you wanted to give a conservative estimate 19 that's how I gave the calculation of the profitability, then 20 it would be only 200 million a year -- each year. 21 Q Okay. 22 A The same amount that I already did. Optimistically, 23 we would have done a billion. Conservatively, we would have 24 reached our 200 million. 25 Q Okay. That is based upon your expectation that you</p>

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<p style="text-align: right;">Page 37</p> <p>1 would have won a bid for the contracts with Ascension; is that</p> <p>2 correct?</p> <p>3 A The billion would have been a bid. The 200 million</p> <p>4 would have just been another order like we placed already;</p> <p>5 that we have proven ourselves, that we delivered when other</p> <p>6 people couldn't deliver. We delivered on time, and we</p> <p>7 delivered quality products. So the 200 million would not have</p> <p>8 been a bid that we would have had to win. The billion would</p> <p>9 have been a bid that we had to win.</p> <p>10 Q And you're making this projection for the</p> <p>11 200 million in the second half of 2021 even though Mr. Elstro</p> <p>12 testified that Ascension was not interested in purchasing</p> <p>13 additional gloves at that time?</p> <p>14 A I don't think Ascension was interested in doing</p> <p>15 anything with Rock Fintek come June/July of 2021 after what</p> <p>16 happened. We became a very sour note in their minds so they</p> <p>17 were not interested in really doing anything with us.</p> <p>18 Q Okay. And, then again, in 2022, this is the</p> <p>19 1 billion gloves that based upon this bid that you were hoping</p> <p>20 to win, and same thing for 2023?</p> <p>21 A So we would have got the 200 million gloves. We</p> <p>22 would presume we would match the same amount that we did the</p> <p>23 previous year at 200 million, and with the hope to get the</p> <p>24 1 billion glove order on top of it.</p> <p>25 Q Now, again, just to understand your profit</p>	<p style="text-align: right;">Page 39</p> <p>1 what we would have made in 2020.</p> <p>2 Q I'm sorry? How much?</p> <p>3 A Similar number at the 40 percent margin.</p> <p>4 Q What are you referring to? I'm sorry?</p> <p>5 A If you go back to that page where it told you how</p> <p>6 much profit that we lost --</p> <p>7 Q You're talking about the Kato Expert Exhibit 1?</p> <p>8 A I don't see it yet.</p> <p>9 Q Hold on.</p> <p>10 ATTORNEY RAKHUNOV: The first document we looked at?</p> <p>11 ATTORNEY SPERBER: Yes.</p> <p>12 THE WITNESS: Okay. So minus some of the losses that we</p> <p>13 got with Skymed with the original order.</p> <p>14 BY ATTORNEY SPERBER:</p> <p>15 Q For the record now, I'm showing you what was</p> <p>16 previously marked as Kato Expert 1.</p> <p>17 A Yes. So, let me scroll -- there you go,</p> <p>18 "\$36 million." So some of the losses came from us sending the</p> <p>19 deposit -- large amount of money to Skymed so that was part of</p> <p>20 the loss.</p> <p>21 Q So, again, what -- give me a dollar amount. How</p> <p>22 much money in profits would Rock Fintek have made in the</p> <p>23 second half of 2021?</p> <p>24 ATTORNEY RAKHUNOV: Objection to form. I don't know what</p> <p>25 that means.</p>
<p style="text-align: right;">Page 38</p> <p>1 projections -- so the 200 million gloves Rock Fintek delivered</p> <p>2 up until June of 2021, Rock Fintek lost money, correct?</p> <p>3 A Repeat that.</p> <p>4 Q On the 200 million gloves that Rock Fintek delivered</p> <p>5 pursuant to the purchase order at issue in this lawsuit, Rock</p> <p>6 Fintek lost money. You said that earlier, correct?</p> <p>7 A Yes, correct.</p> <p>8 Q So we would project further losses for the second</p> <p>9 half of 2021?</p> <p>10 ATTORNEY RAKHUNOV: Objection.</p> <p>11 THE WITNESS: No, I would not have. Because if I didn't</p> <p>12 have fraudulent gloves, I would have been extremely</p> <p>13 profitable.</p> <p>14 BY ATTORNEY SPERBER:</p> <p>15 Q Can you explain that?</p> <p>16 A We have would have made -- the profit that I wrote</p> <p>17 in the letter is how much profit we would have made each year</p> <p>18 for the next three years if we had not received fraudulent</p> <p>19 gloves. This was catastrophic. You've got to understand that</p> <p>20 you couldn't get gloves. They were struggling with supply</p> <p>21 with normal channel chains, and we earned the opportunity to</p> <p>22 deliver to them.</p> <p>23 Q So how much money would Rock Fintek have made in</p> <p>24 profits on the 200 million gloves for the second half of 2021?</p> <p>25 A The second have of 2021 how much profit? Similar to</p>	<p style="text-align: right;">Page 40</p> <p>1 THE WITNESS: We would have made -- let me see --</p> <p>2 \$36 million is what we calculated. Well, I gotta zoom this</p> <p>3 the right way.</p> <p>4 ATTORNEY RAKHUNOV: Don't think out loud, Thomas, because</p> <p>5 then the court reporter has to take that down.</p> <p>6 THE WITNESS: Sorry about that.</p> <p>7 There you go, "Mr. Kato expects Rock Fintek would have</p> <p>8 lost at least approximately \$36 million per year in profits</p> <p>9 for at least three years."</p> <p>10 BY ATTORNEY SPERBER:</p> <p>11 Q So how did Rock Fintek expect to generate</p> <p>12 \$36 million in profits selling those 200 million gloves if</p> <p>13 that's what you are testifying to?</p> <p>14 A We also sold them masks. We also sold them other</p> <p>15 products.</p> <p>16 Q Right, but I'm asking specifically about the gloves.</p> <p>17 A From our good name and ability to deliver, they were</p> <p>18 willing to pay a premium to us because of our good name and</p> <p>19 past history with them.</p> <p>20 Q Well, for the 200 million gloves at issue, you know,</p> <p>21 in this lawsuit, Rock Fintek was paid by Ascension</p> <p>22 approximately \$37 million, correct?</p> <p>23 A Yes.</p> <p>24 Q So would it have been paid a similar amount for the</p> <p>25 next 200 million gloves? Is that what you're testifying to?</p>

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<p>Page 41</p> <p>1 A In 2020?</p> <p>2 Q 2021.</p> <p>3 A In 2021, everything was already done. Dead.</p> <p>4 Q Oh, so -- Rock Fintek was not --</p> <p>5 A After we got the fake gloves, everything died in</p> <p>6 2021. The whole relationship died, so -- any profits were</p> <p>7 dead. Relationship was dead.</p> <p>8 Q You're claiming lost profits here, right?</p> <p>9 A I'm claiming if I had sold gloves that weren't</p> <p>10 fraudulent and I had not lost anything, then yes.</p> <p>11 Q So my question is: How much money would Rock Fintek</p> <p>12 have made in the second half of 2021 had it not sold to</p> <p>13 Ascension what you're claiming were fraudulent gloves?</p> <p>14 A How much it would have made total?</p> <p>15 Q Yes.</p> <p>16 A With Ascension? The contract, at least \$36 million.</p> <p>17 Q In revenue or profits?</p> <p>18 A Profits.</p> <p>19 Q Where is that number coming from?</p> <p>20 A I explained that to you already.</p> <p>21 Q But I -- I can't --</p> <p>22 A \$62 million in payments, \$19 million in suppliers,</p> <p>23 \$6 million in trucking/logistics. Profit left is \$36 million.</p> <p>24 Q So you're saying for the second -- so in business</p> <p>25 year 2021, Rock Fintek would have made an additional</p>	<p>Page 43</p> <p>1 Q Which specific documentation?</p> <p>2 A We have gloves, masks that we were procuring from</p> <p>3 the price we were buying, price they're willing to sell them,</p> <p>4 we were going to continue selling them products that we had in</p> <p>5 the past.</p> <p>6 Q Do you have any evidence that Ascension was willing</p> <p>7 to purchase those products from you in 2021?</p> <p>8 A Yeah. Banks records from the past history.</p> <p>9 Q That was prior purchases. I'm talking about future</p> <p>10 purchases.</p> <p>11 A Well, they wanted to keep working with us. Every</p> <p>12 time they ordered, they ordered the same product with us over</p> <p>13 and over again. It wasn't a one time order of masks or gowns.</p> <p>14 It was multiple times.</p> <p>15 Q Again, do you have any purchase orders that --</p> <p>16 A Yes.</p> <p>17 Q -- that --</p> <p>18 A Yes.</p> <p>19 (Simultaneous colloquy.)</p> <p>20 ATTORNEY RAKHUNOV: One at a time.</p> <p>21 THE WITNESS: Yes, I do. They bought it in 2021. They</p> <p>22 bought masks in 2021. It's in the bank records.</p> <p>23 BY ATTORNEY SPERBER:</p> <p>24 Q Again, were there any purchase orders that Rock</p> <p>25 Fintek withdrew because of the dispute you had in June 2021?</p>
<p>Page 42</p> <p>1 \$36 million in profits had --</p> <p>2 A Starting in --</p> <p>3 (Simultaneous colloquy.)</p> <p>4 ATTORNEY RAKHUNOV: Thomas, let him finish because</p> <p>5 otherwise --</p> <p>6 THE WITNESS: Okay.</p> <p>7 ATTORNEY RAKHUNOV: -- it's just going to be a mess.</p> <p>8 BY ATTORNEY SPERBER:</p> <p>9 Q Sorry. Go ahead.</p> <p>10 A Starting in 2022?</p> <p>11 Q No. No. Again --</p> <p>12 A I'm saying starting in 2022.</p> <p>13 Q Okay. So your testimony is that Rock Fintek made</p> <p>14 all the money it was going to make from Ascension in 2021?</p> <p>15 A Yes.</p> <p>16 Q Okay. Fine. So there is no lost business profits</p> <p>17 for 2021?</p> <p>18 A We lost masks and other products, not gloves.</p> <p>19 Q Okay. How much money would you have made on those</p> <p>20 masks and other products?</p> <p>21 A Approximately on the masks and other products, I</p> <p>22 believe close to \$10 million.</p> <p>23 Q You say you believe that. Do you have any</p> <p>24 documentation to support that assertion?</p> <p>25 A Yes.</p>	<p>Page 44</p> <p>1 A Say that again.</p> <p>2 Q Were there any existing purchase orders for gloves</p> <p>3 or anything else that Rock Fintek withdrew?</p> <p>4 A No.</p> <p>5 Q "No"?</p> <p>6 A No. We did not make purchase orders in advance with</p> <p>7 them. We would talk to them on a daily or weekly basis. And</p> <p>8 whatever would be short that week or throughout that week,</p> <p>9 they would tell us, "We need this product," or "Here's a list</p> <p>10 of products we need the next few days, the next week, the next</p> <p>11 two weeks." It varied from when they needed them.</p> <p>12 And Adorama torched our relationship with Ascension.</p> <p>13 After that, they didn't want to talk to us about any other</p> <p>14 products again even though we had the same products we sold to</p> <p>15 them multiple times previous. And none of the previous orders</p> <p>16 were purchase orders. The purchase order was made on the day</p> <p>17 of the order. It wasn't in advance, "Let me give this to you</p> <p>18 in two months' notice." It was like, "We need this now." I</p> <p>19 said, "Okay." Specific products and specific times. They send</p> <p>20 us a list of products. Those lists stopped coming to us, and</p> <p>21 they didn't want to give us any list and didn't want to</p> <p>22 procure any other items from us.</p> <p>23 Q Okay. But, again, this is all about your opinion</p> <p>24 testimony as an expert concerning lost profits. That's what</p> <p>25 I'm trying to get my arms around here.</p>